

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CMPMO No.233 of 2006

Date of Decision: 25th August, 2006.

A.C.C. Limited

...petitioner

Versus

Jai Jawala Enterprises.

..Respondents

Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.

Whether approved for reporting¹?

For the petitioner: Mr. K.D. Sood, Advocate

For the respondent None

V.K.Gupta, C.J. (Oral)

The case is admittedly governed by the provisions of the Arbitration Act, 1940. Since admittedly the application under Section 8 (2) of 1940 Act was filed by the respondent in the Court of Senior Sub-Judge, Bilaspur on 26th June, 1995 when the Arbitration and Conciliation Act, 1960 had not come into force. In view of Section 85 (2) (a) of 1996 Act since the proceedings under Section 8 (2) of 1940 Act had commenced before the coming into force of 1996 Act, the provisions of 1940 Act would continue to apply to these proceedings.

Despite the fact that two nominee arbitrators had earlier been appointed by the learned Trial Court while exercising its jurisdiction under Section 8 (2) of 1940 Act on 31st March, 1999, in place of the two nominee arbitrators, the Trial Court appointed Collector, Bilaspur as the sole Arbitrator and made a reference of disputes to him. Admittedly this order was not challenged by either of the parties including the petitioner herein. This order thus assumed finality. Because of such appointment of the sole Arbitrator and because of making of reference of disputes to him under 1940 Act, it can be said that the reference did not suffer from any vice or mischief and that the sole Arbitrator rightly, correctly and properly entered upon the reference. His entering upon the reference therefore was not subject to challenge by any of the parties.

Coming to the question of setting aside of the Arbitration Award, both the Courts below, the learned Trial Court as well as the learned Appellate Court exercising jurisdiction under Section 39 (1) of the 1940 Act have found that the award did not suffer from any error apparent on the face of it nor did the arbitrator mis-conduct in any manner. Even otherwise there is no error of fact or law in the award.

Based on the aforesaid discussion, this Court is not inclined to interfere while exercising its jurisdiction under Article 227 of the Constitution of India. The petition is dismissed.

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In view of the dismissal of the main petition, this application shall stand dismissed.

25th August, 2006
(cm)

(V.K. Gupta), C.J.